IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1211 OF 1990

Shri Gous Sahebji Shaikh,
Age 43 years, Occ.Service,
S.T.Driver, B.No.18167,
Chembur Depot, Kurla Depot-
Nehru Nagar, Bombay - 400 024. ...Petitioner

Versus

1.Smt.Amina w/o.Gous Shaikh,
Age 38 years, Occ.Nil, R/o.Ajara

2.Kumar jabbar Gous Shaikh,
Age 19 years, Occ.Education,
G.A.L., Mother Respondent No.1,

3.Kumari Nashim Gous Shaikh,
Age 17 years, Occ.Nil,
G.A.L., Mother Respondent No.1,

4.Kumar Riyaj Gous Shaikh,
Age 15 years, Occ.Education,
G.A.L. Mother Respondent No.1.

5.Kumari Sayara Gous Shaikh,
12 years, Occ.Education,
G.A.L., Mother Respondent No.1,

6.Kumari Shafiya Gous Shaikh,
Age 10 years, G.A.L. Mother
Respondent No.1.

7.Kumar Abubakar Gous Shaikh,
Age 7 years, G.A.L. Mother,
Respondent No.1.

8.The State of Maharashtra ...Respondents

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Mr.Ganesh Gole i/b Mr.A.P.Mundargi for Petitioner.

Mr.K.V.Saste, A.P.P. for Respondent No.8.

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CORAM: A.M.KHANWILKAR, J.

MARCH 16, 2005.

ORAL JUDGMENT :

1. Heard Counsel for the Petitioner.

2. The Respondent No.1 to 7 filed Application for maintenance under Section 125 of the Criminal Procedure Code in the year 1987. The said Application was finally disposed of on 8th September 1989 requiring the Petitioner husband to pay amount specified therein to the Respondents/Applicants. It is not in dispute that the said order has attained finality.

3. As the Petitioner failed to pay the maintenance amount as ordered by the Magistrate on 8th September 1989, Respondents moved application for issuing arrest warrant against the Petitioner. The Court below, after issuing notice to the

Petitioner proceeded to pass order on 18th August 1990, directing that the Petitioner be sentenced to suffer simple imprisonment till 17th August 1991 for default in payment of maintenance amount of Rs.16,250/- (Rupees Sixteen Thousand Two Hundred Fifty) as on till the payment is sooner made.

4. The Petitioner moved application before the lower Court pointing out that he was employed in Maharashtra State Road Transport Corporation and if he is taken into custody and kept in jail, will be deprived of his employment as per service conditions. Taking that aspect into account, the lower Court on 20th August 1990 directed the Petitioner to deposit 25% of the outstanding amount on the said date. In terms of the said directions, Petitioner deposited amount of Rs.4,000/- (Rupees Four Thousand) which has been taken note of, in the order. On that basis, the Court directed issue of yadi to the sub jail to produce the accused before the Court for further orders. The Petitioner challenges both the orders passed on 18th August 1990 and 20th August 1990 respectively.

5. After going through the challenge in the Petition, even assuming that the Petitioner is justified in contending that the nature of directions passed by the lower Court against the Petitioner cannot be sustained, however, in the peculiar facts and circumstances of the present case, to do substantial justice to the parties, especially having regard to the fact that there are seven persons dependent on the Petitioner, I would proceed to dispose of this Petition by modifying the order passed by the lower Court against the Petitioner to the extent to pay sum of Rs.1,000/- (Rupees One Thousand) per month to the Respondent No.1. I am informed that the Petitioner has observed the direction passed by this Court in this behalf in order dated 24th January 1991 in its letter and spirit.

6. Accordingly, this Petition is allowed, but on condition that the Petitioner will continue to pay sum of Rs.1,000/- (Rupees One Thousand) per month to the Respondent No.1, the payment being in satisfaction of the order of maintenance passed by the lower Court against the Petitioner.

7. It is, however, made clear that it will be open to Respondents 1 to 7 to take recourse to remedy for enhancement of maintenance amount if permissible in law and such proceedings will be decided on its own merits in accordance with law.

8. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.